(FILED)
(Aug. 27, 1959)
(B. J. Boyd,)
(Clerk)
(Supreme Court)

John Kasper August 23rd. 1959

P.M.B. 16391 #37034

To The Supreme Court of Tennessee
Supreme Court Building
Nashville, Tennessee

Honorable Sirs:

As I am temporarily without benefit of counsel and incarcerated in prison, making it practically impossible to employ new counsel on short notice, I herewith make the following motion before the Tennessee Supreme Court on my own behalf as appellant petitioner:

Comes the appellant petitioner John Kasper and makes motion for a petition for a rehearing to overturn and set aside the judgment of trial court of Nashville, Homer B. Weimar presiding, and the opinion of Hon. John Swepson of this Court delivered on July 27th, 1959, in which judgment in instant case of Kasper Vs. Tennessee was affirmed.

Reasons why appellant-petitioner believes trial court erred in its verdict and Judge Swepson of this Court did not rule on critical errors assigned in this case are given below, and respectfully urges this Court to grant a full hearing by its several members and set aside the verdict or grant a new trial.

To Wit:

1) Trial court erred in not granting appellant-petitioner's motion challenging the array of veniremen.

Appellant-petitioner proved beyond a reasonable doubt that jury panel did not represent an economic cross-section of

the Davidson County community; that the jury panel represented in fact a class action against the appellant-petitioner, its members constituting a high income professional group, omitting almost entirely the toilers of the fields and working classes.

This denied appellant-petitioner trial by jury of HIS PEERS as guaranteed by the U. S. Constitution and the Tennessee Constitution.

2) Trial court erred in not granting a motion for a change of venue.

Appellant-petitioner on questioning rejected veniremen proved that 23 of some 30-odd veniremen under oath stated that appellant-petitioner could not receive a fair and impartial trial in Davidson County, Tennessee.

3) Trial court erred in not striking from trial jury panel when challenged for cause, one juryman who stated that he had prejudice against the defendant (appellant-petitioner) that could not be overturned in his mind in that very strong evidence in appellant-petitioner's favor.

4) Trial court erred in not allowing evidence of police brutality by Nashville police department against witnesses for the State, viz., Vicent Albert Crimmons and Willie Meador be introduced in the presence of the jury. State witness Meador testified in the absence of the jury that he was in fear of the police at that time (as he was giving his testimony) and stated to attorney Schoolfield for appellant-petitioner that he was being intimidated by State prosec tion to testify against appellant-petitioner.

5) Trial Court erred in not permitting appellant-petitioner to refute testimony of State witness, Floyd Peek.

6) Trial Court erred in exhibiting various weapons before the jury; knives, loaded bats, wires, etc., that were never connected up to appellant-petitioner.

7) Trial court erred in not declaring a mistrial when State's Attorneys R. B. Parker and Paul Bumpus uttered scandalous, defamatory, and mendacious remarks to the jury in their closing addresses to the jury, all of which were not testimony in the trial record, and which were only designed to inflame the jury against appellant-petitioner.

8) Trial Court erred continuously during trial in permitting State to take testimony concerning appellant-petitioner, but would not allow appellant-petitioner to inquire into or refute the same testimony.

9) So far as 'riot' is concerned, none was ever proved which in any way was connected to appellant-petitioner. The greater preponderance of the weight of the evidence was against the verdict of the jury. This ground, the gravamen of the case, shows beyond any doubt, that no arrests were ever made in appellant-petitioner's presence even though large numbers of Nashville City policemen were present at all meetings where appellant-petitioner was a speaker.

No violence ever occurred at meetings where appellant-petitioner was a speaker and testimony of both State and defense witnesses clearly showed that the meetings attended by appellant-petitioner carried all the aspects of an orderly, enthusiastic political rally or a 'revival' type outdoor meeting.

NO RIOT OCCURRED AND APPELLANT-PETITIONER COULD NOT THEREFORE BE GUILTY OF INCITING TO RIOT. To let a conviction stand of this type is to defy all laws of logic and human reason.

Although a speaker's remarks may be reprehensible to

some of his hearers, he nevertheless enjoys the protection of both the Federal and Tennessee Constitutions in exercising that right. The right to speak freely is absolute; it cannot be conditional on anything, otherwise it does not exist.

Judge Swepson's opinion of July 27th cites U. S. Supreme Court Justice Holmes' opinion that a man does not have a right to yell fire in a crowded theatre when there is no fire. Appellant-petitioner takes the position, supported by all adherents to the American Constitution and advocates of American liberty, that one can indeed speak freely, but must stand responsible for any consequences involving unlawful violence or the deprivation of another life, liberty, or property, and which can directly be connected to the speaker.

In the instant case, appellant-petition is supported throughout entire trial record in contention that no 'incident', no act of any person present at any of the meetings where appellant-petitioner was a speaker, could even remotely be construed as riotous. The State's own picture exhibits of these meetings are the best proof of appellant-petitioner in that they show a large gathering of persons peacably assembled. That is all they show.

The Supreme Court of Tennessee will set a dangerous precedent if conviction is upheld in the absence of any 'material' riot in the instant case, and if a conviction is affirmed on such a total absence of evidence, it will not be very long before various other types of harmless activity by American citizens will also be construed as riotous by zealous prosecuters seeking to safeguard their political futures, or advance them.

The matter of yelling fire when there is no fire cannot be relevant in the instant case. There was a fire indeed, in that

racial integration of Nashville public schools was taking place for the first time in the memory of living men and women. A profound social revolution was about to occur and the white citizenry of Nashville were understandably very concerned about it.

Appellant-petitioner takes the position that the exercise of freedom of speech in such a situation does not excite or augment the concerns of a worried populace to the point of riotous conduct, but free expression of one's thought in such a situation serve to decrease the tension which well might end in conflict and violence. In fact, through free speech, such conditions are usually eliminated altogether.

The record shows that although there was wide spread concern over impending racial integration in Nashville in September 1957, there was no violence or riot at any meeting where appellant-petitioner was a speaker.

Further, all 23 witnesses for the state and 37 witnesses for the defense testified under oath that appellant-petitioner did not advocate violence. The only witness for the State who implied that appellant-petitioner ever advocated violence was the witness Meador who was shown to be in physical fear of the police while testifying. (cf. above #4)

Clearly, the unequivocal language of the Constitution of Tennessee and the United States guaranteeing freedom of speech must be swept aside in all its awesome grandeur, destroyed in fact as a protection of any significance, if this verdict is not set aside. Nothing could be more infamous or more judicially despotic than to strike at freedom of speech because much of what was said was not to the liking of certain listeners, particularly political listeners. In the absence of any violence at any meeting

where appellant-petitioner was a speaker, it defied all senses of American justice to affirm a conviction which, in its very nature must be predicated on violence. Without doubt there is here a case of an individual being deprived of his liberty for exercising the badge of honor of free manhood, the freedom of speech.

10.) Trial Court erred in overruling appellant-petitioner's objection to various meetings where appellant-petitioner was a speaker being referred to as "Kasper Meetings". There is abundant proof in the trial record showing there were many speakers from the Davidson County community present, and the same spoke at every meeting attended by appellant-petitioner. There is NO EVIDENCE IN TRIAL RECORD showing that appellant-petitioner ever organized or called the meetings to assembly or for his sole edification. Rather, the trial record clearly shows that meetings held in August and September, 1957, in Davidson County, wherein appellant-petitioner was a speaker, were spontaneous gatherings of the general pupulace to discuss problems confronting them in the face of impending racial integration. This entire case presented by the State in trial is predicated on circumstantial evidence from start to finish. It is patently ridiculous to single out one individual, in this instance, the appellant-petitioner as the one responsible for large numbers of persons assembled for the purpose of listening to many and diverse speakers express their view on racial integration. Even were this true, it would be a type of activity well protected by the Tennessee and U. S. Constitutions, and no infamous charge of this type can legally be entered by agencies of the State.

It is as unreasonble to assume that appellant-petitioner

is responsible for every word uttered by other speakers, and every assembled gathering during the time covered by this lawsuit, as it would be for one member of the Tennessee Supreme Court to be bound by the deliberations and opinions of an associate member of the same court. The analogy may labor a little for the simple reason that a written opinion is delivered expressing the views of the several members of the Court, but it holds true so far as the individual rights and responsibilities of every person are concerned. Every man is responsible for his own soul. If something, no matter how slightly illegal were done at the meetings where appellant-petitioner was a speaker, why were not the other speakers also charged and brought to trial? Both State and defense testimony show that other speakers present said substantially the same thing as appellant-petitioner, as did a vast majority of the general pupulace of Davidson County, whether in private or public.

11.)

11.) Riot and inciting to riot in Tennssee is not a statutory offense. This charge originated as a "common law" offense, and it reverts to the time when there was no written constitition, in the State of Tennessee or the United States. Before the formal adoption of the written Federal Constitution in the State of Tennessee or the United States. Before the formal adoption of the written Federal Constitution and its ratification by the several States in 1787, many types of activity which today are considered basic rights guaranteed by the Constitution, were in those days, high crimes, felonies or misdeameanors in the eye of the Crown or Royal Governor. The American colonists were not permitted to assemble or speak freely in that unlamented past, and individual liberties taken for granted today were severely

limited or curtailed entirely.

If it is now deemed "justice' to reach into the hat whenever a matter arises which is not covered in statutory law and describe it as a common law offense, then justice itself is in a retrogressive condition. Particularly is this true of matters which are more in the nature of political offenses and which under different circumstances might well be construed as virtuous, benevolent, and legitimate activity.

Apart from this obvious fact that legalistic gyrations and machinations were entered into by the State to bring a formal charge in the absence of statutory definition, since the adoption of the Constitution there have been repeated rulings by appellant courts which have upheld the right of persons to peaceably assembly and speakers to speak.

Perhaps the most graphic decision rendered in recent years in a case of this type was a majority opinion delivered by Mr. Justice William O. Douglas of the U. S. Supreme Court in 1947, (U.S. Law) in the case styled "Terminiella vs. Chicago." In that case, a riot had actually occurred. The speaker, one Terminiella, a labor organizer, had actually urged the persons assembled to use force and violence if necessary in gaining their ends. Several persons were injured and Terminiella was convicted of inciting to riot.

In his opinion, Justice Douglas said (here appellant-petitioner relies on memory) that "one of the functions of freedom of speech is to invite dispute, it often strikes at preconceived ideas and deep prejudices, often it stirs up and provokes anger among its listeners, and freedom of speech, though not absolute, must be untrammeled and uninhibited as one of the very foundations of a free democracy. " The petitioner was not free.

More recently, in the controversial "Yale case (1957) U.

S. law, the Supreme Court of the United States has held that it is protected under the 1st. Amendment to the Constitution protecting freedom of speech to "advocate the overthrow of the government by force and violence."

While appellant-petitioner questions the "intent" of many rulings of the U. S. Supreme Court in recent years, it is worth pointing out that the highest judicial tribunal in the nation has afforded blanket coverage to the extremes of personal liberty as outlined in the Constitution. This has been extended to subversives and members of minority groups who have exercised every doubtful strategem to disturb existing order.

In the instant case, appellant-petitioner did not advocate the use of force or violence at any time. The trial record is unchallenged proof of this statement.

Nor were any persons injured at any meeting where appellant-petitioner was a speaker.

Now did appellant-petitioner advocate the overthrow of the government.

And no riot occurred at any time in the presence of appellant-petitioner, to to his knowledge at any other time out of his presence.

Therefore, any conviction under these circumstances, and in the face of all the evidence presented, this so-called "common law" offense cannot be sustained as constitutional, legal, or just in any sense.

In conclusion, appellant-petitioner only reminds this Honorable Court that there is a futher bar of judgment besides the bar of justice, which can often go awry. That is the bar of history, and the judgment of posterity who will possess a more

dispassionate impartial and non-political judgment of the days in which we live, and the acts of man in our time.

Although appellant-petitioner's personal liberty and property is in jeopardy with the affirmation of this most incredible judgment of the trial court and the recent opinion of Judge Swepson, the issue here is far beyond the scope of one individual's liberty or property. What stands at contest are the broad liberal view and visions of liberty championed by early American patriots of this nation, especially the immortal Washington, Adams and Jefferson in our beginnings. And shades of the past may rise to haunt those who would trample liberty in the dust at this hour. The great sons of Tennessee who struggled long and ardorously for American liberty, Andrew Jackson, James Polk, Thomas Hart Benton, Andrew Johnson and Justice McReynolds, all of these and so many more of their blood and breed would look aghast at the feeble defenders of that blood-bought libertyembodied in the Constitution who today use "law" and "justice" as a means to satisfy their own personal power lust and political ambitions.

The right aim of law is to prevent coercion either by force or by fraud, and appellant-petitioner prophecies that meaness of spirit, petty personal consideration of a political nature on the part of this court to swim with the current no matter how unjust it is, will insure a place of dishonor and obloquay to those who lend themselves to the perpetuation of this flagrant injustice. The pusillanimous would have all of us become a~~x~~nts and history will, if necessary, make the judgment.

For these and other good and sufficient reasons, appellant-petitioner prays that this petition for a rehearing be granted and the verdict of trial court be set aside or a new trial granted.

Most respectfully yours,

John Kasper
P.M.B 16391
Tallahassee, Florida

62-105095-69

August 23rd, 1959

John Kasper
16391

To The Clerk, Tennessee Supreme Court,
Nashville, Tennessee

Dear Sir:

Enclosed please find a motion for a petition for a rehearing in the case of Kasper vs. Tennessee.

Please file this motion with the several members of the Court.

I will appreciate your acknowledging receipt of this motion, and a copy, when available, of any decision of the Court on this matter.

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